

Le Apple Boutique Hotel (KLCC) Sdn Bhd v PGCG Assets Holdings Sdn Bhd A

HIGH COURT (KUALA LUMPUR) — CIVIL SUIT B
NO WA-22NCVC-832-12 OF 2020
AKHTAR TAHIR J
7 JULY 2021

Civil Procedure — Summary judgment — Application for — Plaintiff brought action against defendant for sum due and payable under tenancy agreement — Plaintiff applied for summary judgment — Whether application for summary judgment ought to be allowed to determine nature of tenancy agreement with defendant C
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The plaintiff applied for summary judgment for the sum of RM1,650,000 which was paid to the defendant as security deposit and utility deposit under a tenancy agreement dated 18 October 2014. The plaintiff's main claim was for expenses incurred for the extensive renovation works done by the plaintiff on the premises of the defendant on the expectation of a long term tenancy. The renovation works incurred was a result of converting the premise of the defendant into a boutique hotel and the sum expended amounted to more than RM19m. The plaintiff contended that the defendant on terminating the tenancy and taking possession of the renovated premise enjoyed by way of unjust enrichment the benefits of the renovations. While taking up the tenancy agreement, the plaintiff had paid a security deposit as well as utility deposits. The issue for the court was whether the plaintiff's application for summary judgment could be granted to determine the nature of the tenancy agreement between the parties. E
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Held, allowing plaintiff's application for summary judgment with costs of RM3,000:

- (1) Since the court viewed the provisions of payment of deposits and renovations as reciprocal promises, it followed the clauses had to be read separately and could be determined separately. The application of the plaintiff for summary judgment could be decided separately and independently of the main dispute as to the renovation works and the other cause of actions by the plaintiff against the defendant. In deciding whether the plaintiff was entitled to the return of the deposits, the defendant had not forwarded any defence as to why the deposits should be forfeited in part or full. The tenancy agreement was clear and unambiguous that the defendant as the landlord had promised to return the deposits to the plaintiff as the tenant if the plaintiff complied with all H
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- A the terms of the agreement. There was nothing in the defence of the defendant to indicate that the plaintiff had breached any of the terms of the tenancy agreement (see paras 12–15).

[Bahasa Malaysia summary]

- B Plaintiff memohon penghakiman terus bagi jumlah RM1,650,000 yang dibayar kepada defendan sebagai deposit keselamatan dan deposit utiliti di bawah perjanjian penyewaan bertarikh 18 Oktober 2014. Tuntutan utama plaintiff adalah untuk perbelanjaan yang ditanggung bagi kerja-kerja pengubahsuaian yang dilakukan oleh plaintiff ke atas premis defendan dengan jangkaan penyewaan jangka panjang. Kerja-kerja pengubahsuaian yang dilakukan adalah hasil penukaran premis defendan kepada sebuah hotel butik dan jumlah yang dibelanjakan berjumlah lebih daripada RM19 juta. Plaintiff berhujah bahawa defendan dengan menamatkan penyewaan dan mengambil
- D pemilikan premis yang telah diubahsuai telah dinikmati dengan cara pengayaan yang tidak adil faedah pengubahsuaian. Semasa mengambil perjanjian penyewaan, plaintiff telah membayar deposit keselamatan serta deposit utiliti. Isu untuk mahkamah adalah sama ada permohonan plaintiff untuk penghakiman terus boleh diberikan untuk menentukan jenis perjanjian penyewaan antara kedua-dua pihak.
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Diputuskan, membenarkan permohonan plaintiff untuk penghakiman terus dengan kos RM3,000:

- F (1) Memandangkan mahkamah melihat peruntukan pembayaran deposit dan pengubahsuaian sebagai perjanjian bersalingan, klausa tersebut perlu dibaca secara berasingan dan boleh ditentukan secara berasingan. Permohonan plaintiff untuk penghakiman terus boleh diputuskan secara berasingan dan bebas dari tuntutan utama terhadap kerja-kerja pengubahsuaian dan merupakan satu lagi sebab tindakan oleh plaintiff terhadap defendan. Dalam memutuskan sama ada plaintiff berhak memulangkan deposit, defendan tidak mengemukakan apa-apa pembelaan tentang mengapa deposit itu harus diambil secara sebahagian atau penuh. Perjanjian penyewaan tersebut adalah jelas bahawa defendan sebagai tuan tanah telah berjanji untuk mengembalikan deposit kepada plaintiff sebagai penyewa jika plaintiff mematuhi semua syarat perjanjian. Tiada apa-apa dalam pembelaan defendan untuk menunjukkan bahawa plaintiff telah melanggar mana-mana terma perjanjian penyewaan (lihat perenggan 12–15).]
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I Legislation referred to

Contracts Act 1950 ss 52, 53

Edward Kuruvilla (Christopher & Lee Ong) for the plaintiff.
Maylee Gan (Maylee Gan & Tai) for the defendant.

Akhtar Tahir J:

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INTRODUCTION

[1] The plaintiff applied for summary judgment for the sum of RM1,650,000 which was paid to the defendant as security deposit and utility deposit under a tenancy agreement dated 18 October 2014.

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THE BRIEF FACTS

[2] The plaintiff's main claim against the defendant was for expenses incurred for the extensive renovation works done by the plaintiff on the premises of the defendant on the expectation of a long term tenancy.

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[3] This renovation works incurred was a result of converting the premise of the defendant into a boutique hotel and the sum expended amounted to more than RM19m.

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[4] The plaintiff contends amongst others, that the defendant on terminating the tenancy and taking possession of the renovated premise now enjoyed by way of unjust enrichment the benefits of the renovations.

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[5] While taking up the tenancy the plaintiff had also paid security deposit as well as utility deposit ('the deposits'). Independent of the main dispute the plaintiff is now applying for summary judgment for the return of these deposits by virtue of cl 6(d) of the tenancy agreement.

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THE ISSUE

[6] The sole issue in the court's view on whether the plaintiff's application for summary judgment can be granted is to determine the nature of the tenancy agreement between the parties.

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THE NATURE OF THE TENANCY AGREEMENT BETWEEN THE PARTIES

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[7] The tenancy agreement between the parties is exhibited in the affidavit in support of the plaintiff's application for summary judgment.

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[8] It can be noted from the reading of the tenancy agreement that provisions relating to the payment of deposits and the clause with regards to renovation are exclusive of each other.

A [9] Basically the clauses on payment of deposits is contained in cll 3 and 6(d) whereas cl 4 contains the terms for the renovation works.

B [10] Taking guidance from the Contracts Act 1950 the court regards the terms on payment of deposits and the terms relating to renovation as reciprocal promises which contains different terms of performances.

C [11] The relevant provisions in regards to reciprocal promises and their performance are as stated in ss 52 and 53 of the Contracts Act 1950. For ease of reference the provisions are reproduced here.

Section 52 states as follows:

D When a contract consists of reciprocal promises to be simultaneously performed, no promisor need perform his promise unless the promisee is ready and willing to perform his reciprocal promise.

ILLUSTRATIONS

E (a) A and B contract that A shall deliver goods to B to be paid for by B on delivery. A need not deliver the goods unless B is ready and willing to pay for the goods on delivery.

F B need not pay for the goods unless A is ready and willing to deliver them on payment.

(b) A and B contract that A shall deliver goods to B at a price to be paid by instalments, the first instalment to be paid on delivery.

F A need not deliver unless B is ready and willing to pay the first instalment on delivery.

B need not pay the first instalment unless A is ready and willing to deliver the goods on payment of the first instalment.

G Section 53 provides as follows:

Where the order in which reciprocal promises are to be performed is expressly fixed by the contract, they shall be performed in that order; and, where the order is not expressly fixed by the contract, they shall be performed in that order which the nature of the transaction requires.

H ILLUSTRATIONS

(a) A and B contract that A shall build a house for B at a fixed price. A's promise to build the house must be performed before B's promise to pay for it.

I (b) A and B contract that A shall make over his stock-in-trade to B at a fixed price, and B promises to give security for the payment of the money. A's promise need not be performed until the security is given, for the nature of the transaction requires that A should have security before he delivers up his stock.

[12] Since the court views the provisions of payment of deposits and renovations as reciprocal promises it follows therefore the clauses have to be read separately and can also be determined separately.

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[13] The court therefore ruled that the application of the plaintiff for summary judgment can be decided separately and independently of the main dispute as to the renovations works and the other cause of actions by the plaintiff against the defendant.

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[14] In deciding whether the plaintiff is entitled to the return of the deposits the court took note that these deposits have in fact been paid and the defendant has not forwarded any defense as to why the deposits should be forfeited in part or in full.

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[15] Clause 6(d) of the tenancy agreement between the parties is clear and unambiguous that the defendant as the landlord has promised to return the deposits to the tenant ie the plaintiff if the plaintiff has complied with all the terms of the agreement. There is nothing in the defense of the defendant to indicate that the plaintiff has breached any of the terms of the tenancy agreement.

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CONCLUSION

[16] Based on the above factors the court allowed the plaintiff's application for a summary judgment for the return of the deposits with a cost of RM3,000.

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Application for summary judgment allowed with costs of RM3,000.

Reported by Mohd Kamarul Anwar

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